

Application Serial No. 10/780,378
Amendment After Final Action dated November 12, 2008
Reply to Final Office Action of August 21, 2008

REMARKS

Applicants respectfully submit, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114.

Claims 56-75 are pending in the application. Claims 1-55 have been cancelled.
Claims 56-75 have been rejected.

Claim Objections

The Examiner objects to an informality in Claim 56. Applicants have amended Claim 56 in accordance with the Examiner's suggestion, changing the term "articulated" to the phrase "adapted to articulate". Thus, Applicants respectfully request removal of the Examiner's objection to Claim 56.

Claim Rejections - 35 U.S.C. § 102(b)

Claims 56, 58-69, and 71-75 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,944,757 to Martinez et al ("Martinez '757").

Martinez '757 discloses a joint prosthesis, shown in Fig. 1, including tibial extension plate 13, tibial platform or base plate 15, stem bolt 17, lock key 19, and modular stem 22 and/or keel stem 23. Base plate 15 is configured to receive tibial insert 11, which is locked thereto by lock key 19. Positioned below base plate 15 is tibial extension plate 13, which serves as a cap for the top of resected tibia 12. Extending downwardly from base plate 15 is stem 41, which is configured for receipt in modular stem 23 or keel stem 22. Both modular stem 23 and keel stem 22 are configured for implantation within tibia 12.

Applicants respectfully submit that amended independent Claims 56 and 69 are not anticipated by Martinez '757. Specifically, amended independent Claims 56 and 69 call for, *inter alia*, a tibial plate and a tibial post extending from or configured to extend from, respectively, the tibial plate, and a tibial augment including an annular body, the annular body defining an interior wall and an exterior wall, the exterior wall of the tibial augment sized to fit within a cortex of the tibia and having an anterior/posterior dimension and a medial/lateral dimension, the

interior/posterior dimension being no less than 30 mm and no more than 40 mm and the medial/lateral dimension being no less than 40 mm and no more than 80 mm, the interior wall of the tibial augment defining a passageway sized to accept a tibial post therethrough.

In forming the rejection, the Examiner relies on extension plate 13 of the device of Martinez '757 as defining the tibial augment called for in amended independent Claims 56 and 69. However, in contrast to amended independent Claims 56 and 69, extension plate 13 of the device of Martinez '757 does not include an exterior wall sized to fit within a cortex of a tibia and having an anterior/posterior dimension and a medial/lateral dimension, the anterior/posterior dimension being no less than 30 mm and no more than 40 mm, the medial/lateral dimension being no less than 40 mm and no more than 80 mm.

In contrast to the device of the present invention, extension plate 13 of Martinez '757 is designed to cap and/or cover resected tibia 12. Specifically, Martinez '757 states:

Extension plate 13 or tibial base plate 15 may be asymmetrical or its periphery may be customized based upon a single cat scan (CT) slice of cross-sectional information so that the tibial base plate 15 or extension plate 13 fully covers the tibial bone 12. This configuration may achieve better loading on the proximal end of the tibial bone 12 to encourage proper healing.

Martinez '757, column 3, lines 56-62.

Additionally, Martinez '757 continues, "Extension plate 13 may be slightly larger [than tibial base plate 15] to act as an extending cover over the top of the resected tibia 12 in the event the tibial base plate 15 is not wide enough to satisfactorily cap off the end of the tibia 12." Martinez '757, column 4, lines 4-7. Based on the disclosure of Martinez '757, extension plate 13 of Martinez '757 is sized to extend across tibial bone 12 to cap tibial bone 12 and, thus, is not sized to fit within a cortex of the tibia.

Moreover, nowhere does Martinez '757 disclose or suggest extension plate 13 having an anterior/posterior dimension and a medial/lateral dimension, the anterior/posterior dimension being no less than 30 mm and no more than 40 mm, and the medial/lateral dimension being no less than 40 mm and no more than 80 mm.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claims 56 and 69, as well as Claims 58-68 and 71-75, which depend therefrom, are not anticipated by Martinez '757.

Claim Rejections - 35 U.S.C. § 103(a)

Claim 70 is rejected under 35 U.S.C. § 103(a) as being obvious over Martinez '757 in view of 5,683,467 to Pappas ("Pappas '467").

In forming the rejection, the Examiner relies on Martinez '757 as teaching each and every limitation called for in amended independent Claim 69, from which Claim 70 depends. However, for at least the reasons set forth above with respect to amended independent Claim 69, Martinez '757 fails to disclose each and every limitation of amended independent Claim 69. The Examiner's additional citation of Pappas '467 fails to overcome this deficiency as neither Pappas '467 nor Martinez '757, either alone or in combination, disclose or suggest each and every limitation of amended independent Claim 69.

Thus, for at least the foregoing reasons, Applicants respectfully submit that Claim 70, which depends from amended independent Claim 69 is not obvious over Martinez '757 in view of Pappas 467.

Claim 57 is rejected under 35 U.S.C. § 103(a) as being obvious over Martinez '757 in view of U.S. Patent No. 6,136,029 to Johnson et al ("Johnson '029").

In forming the rejection, the Examiner relies on Martinez '757 as disclosing each and every limitation of amended independent Claim 56, from which Claim 57 depends. However, for at least the reasons set forth above with respect to amended independent Claim 56, Martinez '757 fails to disclose each and every limitation of amended independent Claim 56. The Examiner's additional citation of Johnson '029 fails to overcome this deficiency, as neither

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Martinez '757 nor Johnson '029, either alone or in combination, disclose or suggest each and every limitation of amended independent Claim 56.

Thus, for at least the foregoing reasons, Applicants respectfully submit that Claim 57, which depends from amended independent Claim 56, is not obvious over Martinez '757 in view of Johnson '029.

Conclusion

It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the current application is in condition for allowance and such action is earnestly solicited.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

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Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



Matthew B. Skaggs
Registration No. 55,814

Attorney for Applicants

MBS/nw


BAKER & DANIELS LLP
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700

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Signature

November 12, 2008

Date